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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,755	03/22/2000	Craig A. Finseth	PD-990193	8261
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THE DIRECTV GROUP, INC.			SHELEHEDA, JAMES R	
PATENT DOCKET ADMINISTRATION			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/532,755	FINSETH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAMES SHELEHEDA	2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 July 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11, 12, 14, 16-19, 26-43, 45, 46, 49-52, 59-64 and 67 is/are pending in the application.

4a) Of the above claim(s) 26-43, 45, 46, 49-52 and 59-64 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 11, 12, 14, 16-19 and 67 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to Wren and display size have been considered but are moot in view of the new ground(s) of rejection.
  
2. Applicant's arguments regarding different graphics and thresholds have been fully considered but they are not persuasive.

On pages 14-15, applicant argues that the advertisements of Alexander do not comprise different graphics, as "Overlay messages, by definition, do not alter the graphics of the content over which they are placed."

In response, Alexander discloses wherein different graphical overlays are utilized to customize the advertisement based on the location of the viewer. These overlays are used for local advertisements, such as a local business location (column 32. lines 35-45). Thus, the overlays themselves comprise "advertisements" and clearly contain different graphics, as different overlays are advertising different businesses based upon the location. Therefore, applicant's arguments are not convincing.

On pages 15-16, applicant argues that none of the references disclose comparing the similarity scores to a "threshold" as all of the advertisements are compared to one another.

In response, Knee specifically discloses calculating similarity scores for each advertisement (paragraph 47). These scores are then compared to a “threshold” as only the highest scoring ads are selected (best matching; paragraph 47 and 50). As a “threshold” is merely a minimum requirement for further action, the scores are clearly compared to a threshold, as all of the scores are compared, and the highest score is selected. The “threshold” score being the highest score level.

The claims do not define the threshold in any way, and certainly do not require that the threshold be predefined and not relative to the other advertisements, as applicant suggests.

On pages 15-16, applicant argues that none of the references disclose making “two choices” of selecting an advertisement object and then selecting a version of an advertisement associated with the object.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Zigmond discloses selecting one of a plurality of advertisement objects (column 11, lines 31-65 and column 17, lines 21-32).

Alexander was then relied upon to disclose selecting one of a plurality of versions of an advertisement (targeted advertisement overlays) related to an advertisement object (video advertisement; column 32, lines 24-45).

Thus, the combination of Zigmond and Alexander disclose first, selecting an advertisement object (selecting a particular video ad, as disclosed by Zigmond) and then, second, selecting a version of an advertisement associated with the advertisement object (selecting a particular overlay for an ad, as disclosed by Alexander). Therefore, applicant's arguments are not convincing.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 12, 14, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (Zigmond) (6,698,020) (of record) in view of Knee et al. (Knee) (US 2002/0095676 A1) (of record) and Alexander (6,177,931) (of record).

As to claim 14, Zigmond discloses a method for broadcasting and displaying advertisements (column 4, lines 8-15), comprising:

receiving program guide data (column 10, line 64-column 11, line 13) and advertising data (column 12, lines 15-32) including program attribute information

identifying content of each of a plurality of television programs (column 10, line 64-column 11, line 13 and column 12, line 60-column 13, line 13); and

receiving advertising data including a plurality of advertisement objects (video ads to be inserted within the video stream; column 12, lines 15-32 and column 17, lines 10-20) and advertisement attribute information identifying content of each of the plurality of advertisement objects (advertisement parameters; column 12, lines 15-32 and column 11, lines 35-48);

maintaining a selection history comprising a user viewing profile that includes program attribute information identifying content of television programs selected by a user (stored viewing history; column 11, lines 13-30).

While Zigmond discloses performing, for each of the plurality of advertisements (column 17, lines 10-20), one or more comparisons between the advertisement attribute information and the program attribute information of the user viewing profile (column 11, lines 17-49 and column 17, lines 10-20);

selecting at least one advertisement object to display based on the value (displaying ads which are determined to match the viewer's program history; column 11, lines 31-65 and column 17, lines 21-32), he fails to specifically disclose calculating similarity scores for the advertisements, displaying the advertisements based on a comparison of the similarity scores to a first threshold similarity score and wherein the advertisement objects comprise a plurality of versions of an advertisement, and wherein the plurality of different versions of the advertisement comprise advertisements having different graphics, selecting a version of an advertisement associated with the selected

advertisement object based on a comparison of the similarity score of the selected advertisement object to a second threshold similarity score.

In an analogous art, Knee discloses a method for selecting advertisements (paragraph 10; Fig. 5) which compares a user's selection history (paragraph 35, 36 and 50) and advertisement attribute information (ad values; paragraphs 46, 47 and 50) to calculate a similarity score for the advertisement (calculating a "closeness" score to identify which ads of a plurality most closely match the viewer; paragraph 47) and displaying the advertisements based upon a comparison of the similarity scores to a first threshold similarity score (displaying the highest scoring ad; paragraph 47 and 50) for the typical benefit of providing a systematic approach to targeting ads and identifying the best to display to the user, based upon user history and ad criteria (paragraphs 7, 47 and 50).

Additionally, in an analogous art, Alexander discloses a method for targeting advertisements to a viewer (column 32, lines 32-54) wherein an advertising object (television advertisement) has multiple versions of an advertisement available (graphic ad overlays; column 32, lines 32-54) each advertisement including different graphics (column 32, lines 32-54) and wherein one version is selected based upon a comparison of the version to a threshold (only matching version is selected; column 32, lines 32-54) for the typical benefit of allowing an advertisement to be customized to a local viewer through a simple overlay message (column 32, lines 32-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Knee's system to include wherein the

advertisement objects comprise a plurality of versions of an advertisement, and wherein the plurality of different versions of the advertisement comprise advertisements having different graphics, selecting a version of an advertisement associated with the selected advertisement object based on a comparison of the similarity score of the selected advertisement object to a second threshold similarity score, as taught by combination with Alexander, for the typical benefit of providing a simple means to provide specific local information to viewers without needing an entire new advertisement, through an overlay graphic.

As to claim 16, Zigmond, Knee and Alexander disclose storing the advertising data by determining if each of the plurality of advertisement objects received has a similarity score greater than an advertisement object from the set of advertisements (only storing and utilizing the most best matching ads; see Zigmond at column 15, lines 17-23, column 17, lines 10-20 and Knee at paragraph 47).

As to claim 17, Zigmond, Knee and Alexander disclose storing the advertising data in a memory if the memory has sufficient space to store each of the plurality of advertisement objects (see Zigmond at column 15, lines 17-23).

As to claim 18, Zigmond, Knee and Alexander disclose storing the advertising data beyond a lifetime associated with an advertisement object when the advertisement object has a similarity score greater than a third threshold similarity score (wherein a

previously selected ad has been recorded and is now obsolete; see Zigmond at column 14, lines 1-13).

As to claim 11, Zigmond, Knee and Alexander disclose wherein displaying the selected version of the advertisement associated with the advertisement object includes repeating the display of the advertisement associated with the advertisement object at a frequency (see Zigmond at column 13, lines 40-47) based on a similarity score associated with the advertisement object (determining if the ad is displayed; see Knee at paragraph 47).

As to claim 12, Zigmond, Knee and Alexander disclose wherein displaying the selected version of the advertisement associated with the selected advertisement object includes prioritizing advertisement objects based on the similarity scores of the advertisement objects within the plurality of advertisement objects (wherein the order of display for the ads is based upon a “best match” calculation for each ad; see Knee at paragraph 47) and displaying the advertisements associated with the advertisement objects in order of priority (wherein the highest priority or “best match” for each successive ad slot is selected and displayed next; see Zigmond at column 21-49 and Knee at paragraph 47).

5. Claims 19 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond, Knee and Alexander as applied to claim 14 above, and further in view of Berezowski et al. (Berezowski) (6,064,376).

As to claims 19 and 67, while Zigmond, Knee and Alexander disclose a plurality of versions associated with the advertisement objects (see Alexander at column 32, lines 32-54) comprising advertisements for different locations (see Alexander at column 32, lines 32-54), they fail to specifically disclose advertisements of different display sizes.

In an analogous art, Berezowski discloses a system for providing advertisements of different size (column 2, lines 25-50) wherein individual local providers will select advertisements for display at different display sizes (wherein each local provider separately selects the size of their ad; column 5, line 59-column 6, line 11 and column 4, lines 36-40) for the typical benefit of providing more control over the display of advertisements to ensure the ads are displayed to maximize their effect on viewers (column 1, lines 35-56 and column 5, line 59-column 6, line 11 and column 4, lines 36-40).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond, Knee and Alexander's system to include advertisements of different display sizes, as taught by combination with Berezowski, for the typical benefit of providing more control over the display of advertisements to ensure the ads are displayed in the desired manner.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda  
Examiner, Art Unit 2424

JS  
/Chris Kelley/  
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